

Message Text

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ACTION EB-08

INFO OCT-01 AF-10 ISO-00 AID-05 CIAE-00 COME-00 FRB-03
INR-10 NSAE-00 ICA-11 TRSE-00 XMB-02 OPIC-03
SP-02 LAB-04 SIL-01 OMB-01 DODE-00 PM-05 H-01
L-03 NSC-05 PA-01 SS-15 FTC-01 /092 W
-----102144 141343Z /43

R 130654Z SEP 78
FM AMEMBASSY PRETORIA
TO SECSTATE WASHDC 2511
INFO AMCONSUL CAPE TOWN
AMCONSUL DURBAN
AMCONSUL JOHANNESBURG

LIMITED OFFICIAL USE PRETORIA 5382

E.O. 11652: N/A
TAGS: EGEN, EINV, ESTC, ELAB, SF
SUBJECT: APPLICATION OF NEW PROTECTION OF BUSINESSES ACT

REF: PRETORIA 3083

1. IN PRETORIA'S A-82 OF SEPTEMBER 15, 1978, WE ARE REPORTING ON OUR EXPERIENCE TO DATE WITH ENFORCEMENT OF PROTECTION OF BUSINESSES ACT WHICH FORBIDS SOUTH AFRICAN FIRMS FROM COMPLYING WITH FOREIGN ORDERS TO PROVIDE INFORMATION ABOUT THEIR OPERATIONS. WE ARE ALSO TRANSMITTING TEXT OF ACT.

2. SAG'S OFFICIAL EXPLANATION IS THAT NEW ACT IS INTENDED TO PREVENT FOREIGN CIVIL JUDGMENTS FROM BEING ENFORCED BY SA COURTS WITHOUT CONTROL BY GOVERNMENT. U.S. INVESTIGATION OF POSSIBLE ANTI-TRUST VIOLATION BY URANIUM PRODUCERS' CLUB WAS MENTIONED. WE BELIEVE, HOWEVER, THAT IT IS ALSO SEEN AS PROTECTION AGAINST POLITICALLY MOTIVATED DEMANDS FOR INFORMATION, E.G., TO ENFORCE EMBARGOS.

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3. ALTHOUGH LAW SIMPLY INCORPORATES PROVISIONS OF FOUR-YEAR OLD LAW AGAINST DIVULGING INFORMATION, THE PUBLICITY ACCOMPANYING IT HAS FOCUSED RENEWED ATTENTION ON THE PROHIBITION. IT HAS BEEN CITED SEVERAL TIMES TO US BY SOUTH AFRICAN FIRMS IN CONNECTION WITH EXPORT CONTROL MATTERS. LAW HAS NOT YET, HOWEVER, PROVED TO BE AN OBSTACLE IN IMPLEMENTING NEW SCREENING PROCEDURES FOR SALES

OF PRIVATE AIRCRAFT.

4. ON AUGUST 22 AMERICAN CHAMBER OF COMMERCE IN SOUTH AFRICA RAISED WITH ECONOMICS MINISTER HEUNIS WHETHER U.S. SUBSIDIARIES COULD RESPOND TO SULLIVAN GROUP LABOR QUESTIONNAIRE. CHAMBER WAS TOLD SUCH SUBMISSIONS WERE NOT IN CONTRAVENTION OF ACT. ASKED FOR WRITTEN CONFIRMATION, HEUNIS FOLLOWED UP ON AUGUST 28 WITH LETTER STATING SOUTH AFRICAN FIRMS COULD FURNISH THE SPECIFIC INFORMATION WITHOUT HAVING TO OBTAIN HIS PRIOR APPROVAL, BUT COPIES OF SUBMISSIONS SHOULD BE SENT TO DEPARTMENT OF COMMERCE.

5. OUT OF 41 U.S. SUBSIDIARIES THAT RECEIVED JOHANNESBURG'S LABOR QUESTIONNAIRE, ONLY A FEW HAVE INVOKED THE NEW LAW AND REFUSED TO PROVIDE THE INFORMATION REQUESTED.

6. WHILE THERE ARE STILL OBSCURITIES IN THE APPLICATION OF THE ACT, WE HAVE REFRAINED FROM SEEKING AN OFFICIAL INTERPRETATION WHICH COULD PROVE TO BE MORE STRICT THAN THE ACTUAL ENFORCEMENT SO FAR. ON EXPORT CONTROL, CASES SEEM BOUND TO ARISE WHERE THE ATTITUDE OF SAG WILL BE TESTED ON PRE- AND POST-SHIPMENT INFORMATION.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INFORMATION CONTROL, BUSINESS FIRMS
Control Number: n/a
Copy: SINGLE
Draft Date: 13 sep 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978PRETOR05382
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780373-1139
Format: TEL
From: PRETORIA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780972/aaaachaa.tel
Line Count: 85
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: c8025851-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 PRETORIA 3083
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 03 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1452704
Secure: OPEN
Status: NATIVE
Subject: APPLICATION OF NEW PROTECTION OF BUSINESSES ACT
TAGS: EGEN, EINV, ESTC, ELAB, SF
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/c8025851-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014